

CONSERVATION EASEMENT

_____(Grantor) is the owner of that real property more particularly described and shown in Exhibit “A” (hereinafter the “Property”) attached hereto and made a part hereof. The approximately ____-acre Property is also referenced in “The Mitigation Plan For _____”. The Property is subject to the conditions of Department of the Army Section 404/Section 10 Permit Number _____, dated _____, or a revision thereof. One of the conditions of the referenced permit requires restrictions be placed on the deed for the Property for the purpose of providing compensation for adverse impacts to waters of the United States”. Any activities, not included in the permit which may, in the future, be conducted within the Property and will affect the vegetative and hydrologic condition outlined in the success criteria of the Mitigation Plan, must be approved by the United States Army Corps of Engineers (USACE), Galveston District, Regulatory Branch, prior to initiation. This Conservation Easement is created pursuant to the Texas Uniform Conservation Easement Act of 1983 in Chapter 183 of the Texas Natural Resources Code. It is the purpose and intent of this Conservation Easement to assure that the subject lands will be retained and maintained forever predominantly in the vegetative and hydrologic condition described in the success criteria of “The Mitigation Plan for _____”.

WHEREAS, Grantee is qualified to hold a conservation easement, and is either

(a) a governmental body empowered to hold an interest in real property under the laws of this State or the United States; or
a charitable, not-for-profit or educational corporation, association, or trust: , qualified under §501 (c)(3) and § 170(h) of the Internal Revenue Code], the purposes or powers of which include one or more of the purposes (a)-(e) below;

WHEREAS, the purpose of this Conservation Easement include, without limitation, one or more of the following:

- (a) retaining or protecting natural, scenic, or open-space aspects of real property;
- (b) ensuring the availability or real property for recreational, educational, or open-space use;
- (c) protecting natural resources;
- (d) maintaining or enhancing air and water quality;
- (e) preserving the historical, architectural, archaeological, or cultural aspects of real property.

The parties to this agreement include the USACE Permit Applicant, the Grantor, and the Third-Party Administrator (Grantee) who hereby agree that a conservation easement is created which will be subject to the following conditions:

1) Property Description

(Applicant) will provide as Attachment A-1:

- (a) On-site photographs taken at appropriate locations on the Protected Property including all major natural features; and
- (b) A copy of the deed with an accurate legal description or a current survey certified by a Texas Registered Professional Land Surveyor (RPLS) of the Protected Property.
- (c) A copy of a verified wetland survey map, which delineates all waters of the United States, including wetlands within the Property.

2) Term

These restrictions shall run with the land in perpetuity and be binding on all future owners, heirs, successors, administrators, assigns, lessees, or other occupiers and users. The owner must file this Conservation Easement of record with the County Clerk of _____ County, Texas within 10 days of the date this document is signed and provide a copy of the recorded conservation easement to the USACE, Galveston District within 30 days of filing.

3) General

Except for such specific activities as authorized pursuant to DA Permit Number _____, the following activities are prohibited on the Property subject to this Conservation Easement:

(a) There shall be no filling, excavation, mining or alteration of the Property that will affect the success criteria outlined in the Mitigation Plan unless approved in writing in advance by the USACE, Galveston District.

4) Rights of Access and Entry

The USACE shall have the right to enter and go upon the Property for purposes of inspection, and to take actions including but not limited to scientific or educational observations and studies, and collection of samples.

5) Grantor's Reserved Rights

Notwithstanding the foregoing Restrictions, Grantor reserves for Grantor, its heirs, successors, administrators, and assigns the following Reserved Rights, which may be exercised upon provision of prior written notice to Grantee and to the USACE, except where expressly provided otherwise:

(a) Reserved Rights. Grantor reserves the right to engage in all acts or uses not prohibited by the Restrictions, and which are not inconsistent with the conservation purposes of this grant, which is the preservation of the Property substantially in its natural vegetative and hydrologic condition described in the Mitigation Plan.

[Insert for approved mitigation banks: (b) Grantor reserves the sole and unrestricted right to sell credits or other entitlements or interests in the Property in order to perfect and carry out the purpose of a mitigation bank.]

[Additional, case-specific reservations may be listed e.g. wildlife management plans]

6) Enforcement

This Conservation Easement may be enforced by the Grantee and the USACE, or its successor agencies, in an action at law or equity against any person(s) or other entity/entities violating or attempting to violate this Conservation Easement. Any forbearance on the part of the USACE to exercise its rights in the event of a violation shall not be deemed or construed to be a waiver of their rights hereunder in the event of any subsequent failure of the Grantor to comply. In the event of a breach of the Conservation Easement by the Grantor, Grantee, or

another party, or any party working for or under the direction of the Grantor or Grantee, the USACE must be notified immediately. If the USACE becomes aware of a breach of the restrictions, the USACE will notify the Grantor and Grantee of the breach. The parties shall have thirty (30) days after receipt of such notice to undertake actions that are reasonably calculated to swiftly correct the conditions constituting the breach. If the conditions constituting the breach are corrected in a timely and reasonable manner, no further action is warranted or authorized. If the Grantor or Grantee fail to initiate such corrective action within thirty (30) days or fail to complete the necessary corrective action, the USACE may undertake such actions, including legal proceedings, as are necessary to effect such corrective action.

7) Assignment or Transfer

It is understood that this Conservation Easement and any obligations under this Conservation Easement shall not be assigned by Grantee or Grantor, except to another organization qualified to hold such interest under the applicable state and federal laws. The USACE shall be notified in writing of any intention to reassign this Conservation Easement to a new Grantee. A copy of the acceptance must be delivered to the USACE. The Conservation Easement will then be recorded and indexed in the same manner as the original instrument and a copy of the new Conservation Easement must be furnished to the USACE.

8) Warranty

Grantor warrants that it owns the Property in fee simple and that there are no outstanding mortgages, tax liens, encumbrances, or other interests in the Property which have not been expressly subordinated to this Conservation Easement. Grantor further warrants that Grantee shall have the use of and enjoy all the benefits derived from and arising out of this Conservation Easement.

IN WITNESS WHEREOF, Grantor, Grantee and Applicant have executed this Conservation Easement, on the date written hereon. By its execution and acceptance of this Conservation Easement, Grantor, Grantee and Applicant accept the third-party rights of enforcement herein.

Approved by Property Owner (Grantor):

Signature

Date

Printed Name

Title

Approved by Grantee:

DRAFT

Signature

Date

Printed Name

Title

Approved by the Applicant:

Signature

Date

Printed Name

Title